



Hungarian Helsinki Committee

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Budapest, 2 August 2019

Council of Europe

DCI – Directorate General of Human Rights and Rule of Law Department for the Execution of Judgments of the ECHR

F-67075 Strasbourg Cedex

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Subject: NGO communication with regard to the execution of the judgment of the European Court of Human Rights in the *Baka v. Hungary* case

Dear Madams and Sirs,

The Hungarian Helsinki Committee (HHC) hereby respectfully submits its observations and recommendations under Rule 9(2) of the "Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements" regarding the execution of the judgment of the European Court of Human Rights in the *Baka v. Hungary* case (Application no. 20261/12, Judgment of 23 June 2016).

The HHC is an independent human rights watchdog organisation, working towards defending the rule of law in Hungary, which also submitted (together with other Hungarian NGOs) a third-party intervention in the *Baka v. Hungary* case.

The present communication concerns the suggested general measures as included in the decision of the Committee of Ministers from March 2017.¹ The HHC is of the view that **the Hungarian Government has failed to comply with the guidance provided by the decision of the Committee of Ministers:**

- The Government has **failed to take any measures to lift and countervail the "chilling effect"** of the violation of Article 10 of the European Convention on Human Rights in the underlying *Baka v. Hungary* case, and has **failed to adopt any guarantees to avoid any retaliation against judges publicly voicing criticism** in relation to the independence of the judiciary in Hungary.
- **Retaliatory measures against judges expressing criticism and attempts to undermine their professional reputation** have been common since 2018, with **the National Judicial Office and government-affiliated media systematically targeting judges critical towards the President of the National Judicial Office**. This has **contributed to creating a "chilling effect" on the freedom of expression of judges**.
- The Government has taken measures to establish a heavily government-controlled **administrative court system**, which **would create a wider risk of political interference in the independence of the judiciary**. Although these plans have been postponed, they show the direction the Government would like to take in the future.
- The law **fails to guarantee that judges** who are unlawfully dismissed **are to be reinstated into their previous judicial leading position** if the court orders their reinstatement as judges.

¹ CM/Del/Dec(2017)1280/H46-15, 10 March 2017, [http://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2017\)1280/H46-15E](http://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2017)1280/H46-15E)



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1. ATTEMPTS TO UNDERMINE THE REPUTATION OF INDIVIDUAL JUDGES IN ORDER TO SUPPRESS CRITICISM

The early dismissal of Mr Baka as President of the Supreme Court, “prompted by the views and criticisms that he had publicly expressed in his professional capacity”,² was one of the first steps in the long line of governmental measures attempting to exert political control over independent institutions, and, specifically, undermining the independence of the judiciary in Hungary. Lately, these steps have included **undermining the reputation of individual judges who voice criticism concerning the state of the independence of the judiciary in Hungary, which amplifies the “chilling effect” on the freedom of expression of judges** instead of lifting or countervailing it.

In order to understand the context of the measures targeting individual judges, one has to go back to 2011, when the administration of the Hungarian court system was overhauled by the governing majority (and when Mr Baka was dismissed). As part of these changes, the former judicial body in charge of administering courts was replaced by a one-person decision-making mechanism, the President of the National Judicial Office (NJO), elected by the Parliament for a nine-year term. The model and the extensive powers of the NJO’s President over the court administration (including the recruitment and promotion of judges, management of the judiciary’s budget and IT infrastructure) were criticized by many stakeholders, since – as the Venice Commission pointed out – the NJO President is “an external actor from the viewpoint of the judiciary” – fully dependent on the legislature in her election and removal – and therefore, the NJO “cannot be regarded as an organ of judicial self-government”.³

The NJO President’s powers are somewhat controlled by the National Judicial Council (NJC). The NJC is composed of the President of the Kúria (Hungary’s highest court) and 14 judges, who are elected by their peers by secret ballot for a six-year term, with 14 additional substitute members who would become full members in the case of a vacancy. The NJC has the power to scrutinize the actions of the NJO President and, in certain cases, exercise a veto (e.g. in some cases of judicial appointments). Ultimately, if the NJO President breaches her duties for more than 90 days or becomes “unworthy” of the office, the NJC can request Parliament to vote to remove the NJO President from office.

The most problematic issue in the relationship between the NJO President and the NJC has been the appointment of court presidents. The general rules for appointing a court president include a vote by the judges of the specific court and the NJO President can only appoint someone if they are supported by the majority of judges. If the NJO President wishes to appoint an applicant not supported by the judges, she must seek the consent of the NJC.⁴ This is a method to secure judges’ participation in the selection process. The problem is that the NJO President has the power to annul the entire call and render the appointment procedure unsuccessful without the consent of any judicial body. In this case, she may appoint an interim court president for up to one year.⁵ By way of example, at the Budapest Regional Court (*Fővárosi Törvényszék*) the NJO President rendered the last three calls unsuccessful and as a result the court has had no permanent president since January 2018.⁶

Selecting court presidents is a strong power of the NJO President, because court presidents have broad authority over judges and cases of their courts: court presidents evaluate the work of judges, which

² *Baka v. Hungary* (Application no. 20261/12, Judgment of 23 June 2016), § 151.

³ Venice Commission, *Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary*, Opinion 663/2012, 19 March 2012, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)001-e), § 51.

⁴ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 132(6)

⁵ Act CLXI of 2011 on the Organisation and Administration of the Courts, Article 133(1)-(2)

⁶ See e.g.: <https://24.hu/kozelet/2019/06/13/hando-tunde-birosag-obh-fovarosi-torvenyszek-vadasz-viktor/>.



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determines the progress of their career; they are entitled to launch disciplinary proceedings; and court presidents influence the everyday working conditions of individual judges, including permitting or denying the right to work from home or the number of assistants. Court presidents can also influence the fate of individual cases as they issue the case allocation scheme of the court.

The conflict between the NJO President and NJC broke out over the NJC's finding that the NJO President violated the law with the practice of repeatedly annulling – often without any proper justification – calls for applications where the result of the judicial vote on candidates was not in line with her preferences.

The timeline of the conflict is described in detail in the May 2019 report of the European Association of Judges, which characterized the situation as a kind of **"constitutional crisis"**:⁷

- After the previous NJC-members' six-years mandate expired, new NJC members were elected in January 2018. Unlike the previous members of NJC the majority of the newly elected judges were not holding high administrative positions in the judiciary. The new composition of the Council projected more efficient control over the central judicial administration (i.e. the President of the NOJ^[8]).
- At the beginning of 2018 two judicial assemblies (Metropolitan Court of Budapest and Győr Regional Court of Appeal) requested from the NJC to investigate decisions of the NOJ President on judicial applications and appointment of court presidents. [...]
- In April 2018 – when the NOJ President was already familiar with the content of the [...] report [on the appointment of presidents] – all of a sudden and completely unexpected 5 members and 12 substitute members of the NJC did resign. This means that the number of members in the NJC (totalling 15) was reduced to 10. Among them there was no judge from an administrative and labour court, as the law directs. In the background unlawful interference was foreshadowed that came from the President of the NOJ or regional court presidents selected and appointed by her. NJC was officially reported that some members were even threatened by court presidents.
- As the headcount of the NJC declined from 15 to 10, the NOJ-President declared the Council illegitimate, and since May she refuses to cooperate and provide data on request; nevertheless, the President of the Curia (Hungarian Supreme Court) and NJC confirmed that the Council operates in a legitimate way, and that her interpretation of law is simply false. The NOJ President didn't participate at meetings of NJC since May [2018] and refused to cooperate.
- On May 2nd 2018, based on the inquiry of the NJC Committee, the NJC stated that the NOJ-President unlawfully declared several judicial applications and several proceedings to appoint court leaders "unsuccessful" and nullified these without proper justification (or with no justification at all).
- A[n] extraordinary electoral assembly was summoned to elect additional NJC-council members, however regional court presidents, vice-presidents and collegium leaders which were directly appointed by the President of the NOJ along with lower court presidents and vice-president directed by them – as electors – obstructed the electoral assembly to elect the new members on October 10th 2018. The nominated court executives refused to accept candidature; meanwhile, the majority prevented ordinary-judge electors to apply for membership. The electoral assembly were held without a secret ballot, and several other breaches of procedural rules were reported afterwards.
- The electoral assembly and (one day later) the regional court presidents appointed by the NOJ-President, published a statement in which they ask remaining NJC-members to resign. [...The] presidents used the phrase "in the name of the Hungarian Judiciary", which caused a storm of indignation among judges. The Hungarian Association of Judges (MABIE) and several judges from all over the country made open statements and wrote petitions objecting the appeal of the assembly and court presidents. These were published on <http://www.mabie.hu>.

⁷ European Association of Judges, *Report on the fact-finding mission of the EAJ to Hungary*, May 2019, <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 5.

⁸ In the report of the European Association of Judges, "NOJ" stands for the National Judicial Office, abbreviated as NJO in other parts of the present communication.



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- The remaining NJC-members are subject of continuous persecution, annoyance and retaliatory actions from court presidents and personally from NOJ President (e.g. disciplinary proceedings, ban from certain professional activities). [Some examples are described below in more detail.]
- The Minister of Justice abstains from interference on any side; however, a representative of the Minister of Justice participates – alongside with the representative of the Bar Association – continuously in the meetings of NJC.⁹

Eventually, the NJC requested Parliament to remove the NJO President for not complying with her statutory obligations.¹⁰ The government majority, however, protected the NJO President and refused the request for removal without debate and without refuting the NJC's allegations. The Parliament spent altogether three minutes on the issue, including the vote.¹¹ Following this, 14 court presidents (appointed by the NJO President, some of them as interim presidents appointed after the nullification of the respective calls for application) issued an open letter welcoming the Parliament's decision and calling again on the NJC members to resign.¹²

As a result of this conflict, **members of the NJC who have been vocal against the unlawful practices of the NJO President have suffered retaliation in various forms, aimed at undermining their reputation before the professional and general public.** The NJO President went as far as labelling NJC members as "traitors of the homeland" for informing international partners about their concerns.¹³ Other retaliating measures taken by the NJO President or her allies (e.g. court presidents loyal to her) include the rejection of these judges' applications to leading judicial positions, the removal of the affected judges from various working groups and professional bodies (meaning not only prestige but also additional remuneration), limiting their possibilities to hold lectures or participate at conferences or trainings, and cutting their premiums. At the same time, government-affiliated media outlets have been publishing articles aimed at discrediting these judges. Just as in the *Baka v. Hungary* case, **these steps were prompted by the views these judges had expressed in their professional capacity and in relation to how courts are administered, and generally in relation to the independence of judges.** This means that these judges have faced retaliation for raising questions of public interest, in statements that "did not go beyond mere criticism from a strictly professional perspective".¹⁴

These instances clearly show that, in contrast to the decision of the CoM, the Hungarian Government has **failed to take any measure to lift and countervail the "chilling effect"** of the violation of Article 10 of the European Convention on Human Rights in the *Baka v. Hungary* case, and has **failed to adopt any guarantees** to avoid any retaliation in violation of Article 10 against judges voicing criticism. Since the above instances have been **affecting high-ranking, prominent judges in prestigious positions**, and since **the attacks against them have been very public**, they must have **further contributed to the "chilling effect"** the case of Mr Baka had, and created a system and an environment where judges and court president must be "discouraged [...] in future from participating in public debate [...] on issues concerning the independence of the judiciary."¹⁵

The HHC has received written testimonies from three members of the NJC in July 2019 on the retaliatory measures against them and the articles targeting them – below, we summarize the main points of these testimonies. It is either clear and can be shown or it can at least be strongly presumed that these judges

⁹ European Association of Judges, *Report on the fact-finding mission of the EAJ to Hungary*, May 2019, <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, pp. 4-5.

¹⁰ Available in English at: https://www.dropbox.com/s/9w8gkq8u8zm3ixs/34_2019%20OBT%20decision%2008.05.2019.pdf?dl=0.

¹¹ See: <https://www.parlament.hu/documents/10181/1569934/ny190611/b0b4a97c-7682-6529-1db0-f96c9e7ccf32>, p. 9161.

¹² See e.g.: <http://ugyvedforum.hu/cikkek/2019/07/mondjanak-le-mivel-vegervenyesen-megszunt-koziogi-hitelesseguk-es-legitimitasuk-allitja-nyilatkozataban-az-obt-rol-tizenegy-iteloablai-es-torvenyszeki-elnok>.

¹³ See e.g.: https://index.hu/belfold/2018/06/17/hazaarulok_kritizaljak_a_birosagi_rendszer_atalakitását_hando_tunde_szerint/.

¹⁴ *Baka v. Hungary* (Application no. 20261/12, Judgment of 23 June 2016), § 171.

¹⁵ *Baka v. Hungary* (Application no. 20261/12, Judgment of 23 June 2016), § 173.



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were subject to these measures due to their membership in the NJC and the criticism they have been voicing. We are of the view that this selected list clearly shows **that the NJO and the government-affiliated media has systematically targeted judges critical towards the President of the NJO.**

1.1. Measures aimed at hindering the professional advancement of the judges concerned

Rejecting the application of an NJC member to a leading judicial position:

- In March 2019, one of the judges concerned submitted an application to the position of president of the Budapest Regional Court. He was supported by 67% of the judicial council responsible for evaluating such applications, while the application of the temporary acting president of that court (appointed by the President of the NJO earlier) was supported by only 17% of the judicial council. However, the President of the NJO used her extensive legal powers to declare the call for applications unsuccessful.¹⁶

Excluding NJC members from working groups and professional bodies:

- One of the judges had been a member of the board of examiners for the specialized legal (bar) exam since 2013, but after his mandate expired last year, it was not renewed. Another judge was explicitly recommended by his court as a member of the board of examiners in 2018, but he was not appointed to the board.
- Two of the judges concerned were excluded from the working group addressing issues related to the coming into force of the new Code of Criminal Procedure, administered by the NJO and closely related to their area of expertise, even though they were members of the predecessor of that working group.
- One of the judges concerned was not appointed to an instructor position in the judicial unit of which he is the leader, even though he was recommended for the position by his direct superior. He was told that this happened due to the role he plays in the NJC, but the court leaders responsible refused to put this down in writing and failed to point to any professional reasons for their decision.

Excluding NJC members from educational activities:

- One of the judges concerned was regularly giving lectures at the Hungarian Academy of Justice (a department of the NJO) starting in 2013, but has not been asked to give any lectures since April 2018 (which coincides with the date of the escalation of conflict between the NJC and the NJO). In August 2018 an earlier invitation to give a lecture was cancelled. He is also no longer invited as a lecturer to the Budapest Regional Court, and his invitation issued by the Budapest Regional Court to give a lecture in 2019 to judges from abroad was withdrawn.
- Another judge was also a regular lecturer both at the Hungarian Academy of Justice and the Budapest Regional Court, but as the conflict between the NJO and the NJC escalated he has been excluded from the working group on trainings and cannot give lectures anymore. In the spring of 2019, his invitation to be a lecturer at a training organised by the Budapest Regional Court was withdrawn without any clear explanation.

Excluding NJC members from trainings:

- Two of the judges interviewed reported that they were individually approached and invited in early 2018 to participate at a free-of-charge training organised at the National University of Public Service, after it turned out there were not enough participants. However, after the conflict between the NJC and the NJO escalated, they were ultimately not allowed to participate in the training.

¹⁶ See e.g.: <https://www.jogiforum.hu/hirek/40560>.



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- The third judge reported that in the spring of 2019, the Budapest Regional Court organised a leadership training to which they invited all the judicial unit leaders at the court he works at, except for him.
- It was submitted that the President of the NJO systematically tries to prevent NJC members from participating at conferences, workshops and other professional events by trying to persuade the organisers to withdraw their invitations.

Cutting premiums:

- It was reported that NJC members and judges expressly supporting the NJC seem to receive a lower amount of money as premium than their colleagues. One of the judges reported that he got significantly less premium than his own deputy at the end of 2018.
- One of the judges reported that he did not receive his mandatory premium at all in 2018, and had to launch a lawsuit for the premium to be paid to him.

Miscellaneous disadvantageous work conditions:

- One of the judges reported at the end of July that since April 2019 he has had no administrative assistant assigned to him, while all the other judges in his department at the Budapest Regional Court have such an assistant. He added that it was unprecedented at the Regional Court that a judge in his position has no administrative help for such a long period of time.
- One of the judges concerned requested his partial exemption from holding trial hearings due to his membership in the Executive Board of the European Networks of Councils for the Judiciary (ENCJ), based on a legal provision explicitly allowing for such an exemption, but his request was denied without any substantial reasoning.
- One of the judges has been regularly informing his peers about the activities of the NJC via the intranet system of the court he works for. His right to publish any posts at all was temporarily withdrawn, only to be restored later with the condition that he does not publish news concerning the NJC.
- In May 2018, the President of the NJO made an employee to sign a statement that three NJC members had used a rude, threatening tone with her (in a situation when NJC members were denied access to documents that they would have been legally allowed to inspect). Without allowing the judges to react to the false accusations, the President of the NJO had the statement widely distributed among the courts, aiming to distribute it among all Hungarian judges. At the same time, the President of the NJO initiated a disciplinary procedure against one of the judges concerned, but since the NJC refused to waive the judge's immunity, the disciplinary procedure could not be conducted.

To sum it up: testimonies received show that **the President of the NJO is aiming to undermine the professional status and prestige of judges criticizing the NJO** by denying them the possibility to participate at trainings, to hold lectures, or to be mandated with extra tasks (resulting in extra income and/or professional prestige). It has to be highlighted that some of these activities (such as being a lecturer or giving a training) mean extra points when applications to judicial positions are assessed. Thus, excluding judges from these opportunities may have a direct negative effect on their career path, too.

Finally, it has to be mentioned that members of the **Hungarian Association of Judges ("MABIE") have also been targeted by the NJO**, after the association had raised a critical voice in relation to the above outlined events. Retaliatory measures included the withdrawal by the NJO of monetary support and of the permission to use a certain building as their seat. In addition, members of MABIE have been listed at certain



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courts, and the presidents of the regional (county level) courts **called upon judges in leading positions to press subordinate judges to terminate their membership in MABIE.**¹⁷

1.2. Articles in the government-friendly media personally attacking judges voicing criticism

NJC members and specifically the three judges referred to above have also been subject to attacks in a series of articles, published in government-friendly newspapers and media outlets. These articles **contain false accusations and/or are aimed at undermining the credibility and reputation of the judges concerned in the eyes of the public.** The articles serve as retaliation and also as a message to other judges that if they criticize the NJO, they will be subject to a witch-hunt by the government-friendly media. Thus, these articles heavily contribute to the "chilling effect" on the freedom of expression of judges.

It is beyond the scope of the present communication to list the **dozens of articles** published since early 2018, so below we only present a selected list of some of the most severe ones:

- On 2 June 2018, the government-friendly newspaper *Magyar Idők* (a newspaper that openly declared that they are a "pro-government" newspaper¹⁸) falsely stated that NJC members had denounced the Hungarian Government before the ENCJ.¹⁹
- On 17 June 2018, the President of the NJO called some NJC members "traitors of the homeland" in a radio interview on national broadcast: "I find it regrettable [...] that some of our judges – forgetting themselves and their duties and responsibility for the community – go abroad and betray our country."²⁰
- On 20 June 2018, *Magyar Idők* published an article about the President of the ENCJ with the following title: "Mineworking of some judges together with Soros-network". The newspaper presumed a link between George Soros, the Helsinki Foundation for Human Rights from Poland and the ENCJ. The article named one NJC member as someone who was involved in this international "conspiracy" against the Hungarian Government.²¹
- On 21 June 2018, *Magyar Idők* named one NJC member as someone who "discredits Hungary in various international forums", called his activity in the social media unethical, and linked him to the "Soros-network".²²
- In an article published on 22 June 2018, *Magyar Idők* targeted five members of the NCJ, stating that the NCJ was politically biased against the Government in various ways, which could be deduced from court decisions NJC members were involved in as acting judges in the past.²³
- After an academic lecture given at the Hungarian Academy of Science an NJC member was called politically biased because he expressed his opinion on the necessity of legal amendments to solve the critical situation of the NJC. The article was published by *Magyar Idők* on 5 July 2018.²⁴
- On 21 August 2018 the blog *Tűzfalcsoport* (a government-friendly political blog with anonymous authors and editors, whose "lead" is often followed by government-friendly newspapers) leaked information about the disciplinary proceeding initiated against an NJC member by the President of the

¹⁷ See e.g.: <https://444.hu/2019/02/26/egy-neveket-es-adoszamokat-tartalmazo-listaval-probalhatnak-nyomast-qyakorolni-a-birakra>.

¹⁸ <https://www.magyaridok.hu/belfold/magyar-idok-5044/>

¹⁹ <https://magyaridok.hu/belfold/fejjelentette-a-magyar-kormanyt-az-obt-3158317/>

²⁰ See: <http://hangtar.radio.hu/kossuth#!#2018-06-17>, between 07:32:30 and 07:43:20.

²¹ <https://magyaridok.hu/belfold/birok-aknamunkaja-a-soros-halozattal-3214144/>

²² <https://magyaridok.hu/belfold/etikailag-kifogasolható-tevekenység-3218626/>

²³ <https://magyaridok.hu/belfold/nem-fuqgetlen-az-obt-3222184/>

²⁴ <https://magyaridok.hu/belfold/megerositenek-az-obt-t-a-politizalo-jogaszok-3264092/>



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NJO. The article was based on information only known by the disciplinary court and the NJO President herself.²⁵

- On 24 August 2018 *Magyar Idők* summarized recent articles of the *Tűzfalcsoport* blog with the following title: "Double standard in Hungarian courts – there are judges who avoid disciplinary proceedings if they commit misconduct".²⁶
- On 9 May 2019 (one day after the NJC decided to initiate the removal of the NJO President before the Parliament) the portal *Pesti Srácok* published an article with the title "More than enough: the oppositionist judges joined the EP campaign". The article named several NJC members, and stated that two members, both responsible for international relations, serve "the interest of the human-trafficker and speculator [George Soros]" with their professional activity.²⁷
- On 14 June 2019 *Tűzfalcsoport* claimed that the spokesperson of the NJC and another member of the NJC demolish the reputation of the Hungarian state via government-critical Twitter posts.²⁸ On 17 June 2019 *Magyar Nemzet* reported on the above-mentioned article of *Tűzfalcsoport* with the following title: "NJC is playing for the fall of the Hungarian Government".²⁹
- On 19 June 2019 *Magyar Nemzet* claimed that the report on the fact-finding mission of the European Association of Judges condemned Hungary in an unfair proceeding based on political motivations. The article also named several NJC members and claimed that they were attacking the Hungarian judiciary on the basis of their politically biased personal opinions.³⁰

The **three judges** who gave testimonies to the HHC and were in the centre of the attacks **launched civil law procedures against the newspaper *Magyar Idők***, claiming in relation to several of the articles published that those articles had violated their inherent personality rights. All three of them **won their cases in the first instance** (the procedures are pending in the second instance after *Magyar Idők* appealed).

These examples show how the NJC members are attacked and intimidated for their opinions on the crisis of judicial administration that severely affects judicial independence. The professional criticisms they voice and the lawful actions they take to remedy the situation are pictured as "betrayal" of the country and attempts to undermine the current government, although these concerns are shared by many important European actors. In addition to the European Association of Judges, this year's country-specific recommendations of the Council of the European Union within the European Semester noted that "[t]he National Judicial Council faces increasing challenges in counter-balancing the powers of the President of the National Office for the Judiciary [i.e. the National Judicial Office]. Questions have been raised regarding the consequences of this for judicial independence",³¹ while Thomas Markert, Secretary of the Venice Commission stated that from a rule of law viewpoint, the powers of the President of the National Judicial Office are "the most problematic" in Hungary.³²

Thus, it can be concluded that the Hungarian legal and political context is far from conducive to the freedom of expression of judges when it comes to judicial independence and related issues, and the Hungarian state authorities have failed to take effective measures to address this situation.

²⁵ <https://tuzfalcsoport.blogstar.hu/2018/08/21/nyilatkozni-van-ideje-itelkezni-nincs-megtudtuk-miert-indult-fegyelmi-az-obt-s-hilbert-edit-ellen/57239/>

²⁶ <https://magyaridok.hu/belfold/kettos-merce-a-hazai-birosagokon-3413119/>

²⁷ <https://pestisracok.hu/ez-mar-tobb-a-soknal-az-ellenzeki-birok-beszalltak-az-unios-kampanyba/>

²⁸ <https://tuzfalcsoport.blogstar.hu/2019/06/14/kormanybuktatasra-jatszhat-az-obt/74607/>

²⁹ <https://magyarnemzet.hu/belfold/kormanybuktatasra-jatszhat-az-orszagos-biroi-tanacs-7031675/>

³⁰ <https://magyarnemzet.hu/belfold/koncepcios-eljaras-folyt-hazank-ellen-7035815/>

³¹ <http://data.consilium.europa.eu/doc/document/ST-10170-2019-REV-2/en/pdf>

³² <https://www.klubradio.hu/adasok/velencei-bizottsag-hando-tunde-posztjaval-van-a-legnagyobb-baj-106931>



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2. THE PROSPECT OF ESTABLISHING A NEW ADMINISTRATIVE COURT SYSTEM

The Hungarian Government has been planning to set up a **heavily government-controlled administrative court system** that would have been separate from the ordinary courts. The envisaged new court system would have had jurisdiction over taxation, public procurement and other economic matters, election, freedom of assembly, asylum and certain other human rights issues, as well as all kinds of decisions taken by public administrative authorities. According to the respective law adopted in December 2018, **the Minister of Justice** (a political member of the Government) **and the President of the future Supreme Administrative Court** (elected by the Parliament) **alone would have had decisive power over the recruitment and the promotion of judges, the appointment of administrative court presidents, budgeting and case allocation**, without a sufficiently strong judicial council to counterbalance these powers. This would have resulted in a new court system where “very extensive powers are concentrated in the hands of a few stakeholders and there are no effective checks and balances to counteract those powers”.³³ Several domestic and international actors have expressed concerns over the law, such as the Council of Europe Human Rights Commissioner,³⁴ the Venice Commission,³⁵ the First Vice President of the European Commission,³⁶ and the UN Special Rapporteur on the independence of judges.³⁷ In response to international criticism, in May 2019 the Government announced that the setting up of administrative courts was “**indefinitely postponed**”,³⁸ and a law to that effect was adopted in July 2019. However, statements by high-ranking political actors, including Hungary’s new Minister of Justice³⁹ show that “postponing” the introduction of the administrative court system **does not mean that the Government has given up** on setting up special courts with less oversight and increased risk of political interference.⁴⁰ Also, a reference to the administrative courts has remained included in the Fundamental Law (the constitution of Hungary).⁴¹

Even though the law above did not explicitly violate or restrict the freedom of expression of judges, it **would have provided for a wider risk of political interference with the independence of the judiciary**.⁴² Since in the new system recruitment and promotions of judges would have been largely dependent on a Minister, it is easy to see that judges criticising, for example, legislative or governmental steps regarding the judiciary, would have had trouble rising through the ranks in the new system. In this sense, the idea of the administrative courts has been **another attempt to exert a chilling effect on the freedom of expression of judges**.

³³ Venice Commission, *Hungary – Opinion on the Law on Administrative Courts and on the Law on the Entry into Force of the Law on Administrative Courts and Certain Transitional Rules*, Opinion no. 943/2018, 19 March 2019, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)004-e), § 113.

³⁴ *Commissioner calls on Hungary’s President to return to the Parliament the legislative package on administrative courts*, 14 December 2018, <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-hungary-s-president-to-return-to-the-parliament-the-legislative-package-on-administrative-courts>

³⁵ Venice Commission, *Hungary – Opinion on the Law on Administrative Courts and on the Law on the Entry into Force of the Law on Administrative Courts and Certain Transitional Rules*, Opinion no. 943/2018, 19 March 2019, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)004-e)

³⁶ *Opening remarks by First Vice-President Frans Timmermans at the LIBE Committee in the European Parliament on the reasoned proposal under Article 7(1) TEU regarding Hungary: state of play*, 21 March 2019, https://ec.europa.eu/commission/commissioners/2014-2019/timmermans/announcements/opening-remarks-first-vice-president-frans-timmermans-libe-committee-european-parliament-reasoned_en

³⁷ *Hungary: more needs to be done to bring legislation on administrative courts in line with international standards, UN Expert says*, 5 April 2019, <https://www.ohchr.org/Documents/Issues/Judiciary/InfoNoteHungary8Apr2019.docx>

³⁸ *Hungarian Government postpones the introduction of administrative courts due to international pressure*, 3 June 2019, https://index.hu/english/2019/06/03/administrative_courts_postponed_hungary_fidesz_government_eu_epp/.

³⁹ See e.g.: <https://www.euronews.com/2019/07/24/hungary-rejects-rule-of-law-criteria-for-eu-funding-minister>.

⁴⁰ A detailed timeline of events is available here in English: Amnesty International Hungary – Hungarian Helsinki Committee, *A Constitutional Crisis in the Hungarian Judiciary*, 9 July 2019, <https://www.helsinki.hu/wp-content/uploads/A-Constitutional-Crisis-in-the-Hungarian-Judiciary-09072019.pdf>, pp. 5–6.

⁴¹ Article 25(1) of the Fundamental Law sets out that “Courts are ordinary and administrative courts.” Article 25(3) adds the following: “Administrative courts decide administrative disputes and cases referred to in laws. The highest authority of administrative courts is the Supreme Administrative Court.”

⁴² Renáta Uitz, *An Advanced Course in Court Packing: Hungary’s New Law on Administrative Courts*, 2 January 2019, <https://verfassungsblog.de/an-advanced-course-in-court-packing-hungarys-new-law-on-administrative-courts/>



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3. LACK OF GUARANTEES TO BE REINSTATED INTO A JUDICIAL LEADING POSITION AFTER DISMISSAL

In its latest decision,⁴³ the Committee of Ministers required the provision of “a complete and effective right to review, by an ordinary tribunal or other body exercising judicial powers, of any measure leading to the removal or dismissal of a judge”. The action report of the Government submitted in July 2019 in the *Baka v. Hungary* case⁴⁴ rightly states that a judicial review is indeed available to judges dismissed in an ordinary manner. However, it fails to mention that under Article 145(4) of Act CLXII of 2011 on the Status and Remuneration of Judges **if a judicial leader** (e.g. court president or vice president) **is dismissed unlawfully, and their reinstatement is subsequently ordered by the court deciding on the unlawfulness of the dismissal, they can only be reinstated into their leadership position if that has not been filled by someone else in the meantime.** This means that the dismissed person can continue to serve as a judge, but may not be able to continue their work as a court president or vice president. This is of course an important loophole in the system, as it makes it possible to replace court leaders at the price of the state losing some money. (If a dismissed judge wins their case and gets reinstated as a judge, they will get some compensation and they will also be entitled to receive their leadership benefit until the time their original mandate would have expired.)

Due to the above, **the right to review cannot be considered “complete and effective”.** It also has to be pointed out that this issue has not been covered by the inadmissibility decision delivered by the European Court of Human Rights in the *J.B. and Others v. Hungary* case (Application nos. 45434/12, 45438/12 and 375/13, 27 November 2018) because in that case the applicants’ freedom of expression (as part of a senior judge’s right and duty to form and express opinions on matters concerning the administration and independence of the judiciary) was not addressed by the Court at all.

RECOMMENDATIONS

For the reasons above the HHC respectfully recommends the Committee of Ministers to **continue examining the execution of the judgment** in the *Baka v. Hungary* case, and to call on the Government of Hungary to:

- Take effective measures to guarantee that the NJC and its judge members can exercise their statutory right and obligation of safeguarding judicial independence through, among others, formulating and disseminating critical opinions on the administration and independence of the judiciary, without any undue interference, including intimidation, retaliatory administrative measures and attacks on their reputation.
- Amend the Fundamental Law and delete from it the reference to administrative courts. Ensure that any related constitutional change is introduced only after an open and inclusive public debate about the judicial system and judicial independence.
- Amend the respective law in a way that if a judicial leader challenges their dismissal by launching a lawsuit, only a temporary appointment to that judicial leading position can be made until the lawsuit is settled, and if the judge is reinstated, they also have to be reinstated to their former judicial leading position.

⁴³ CM/Del/Dec(2017)1280/H46-15, 10 March 2017, [http://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2017\)1280/H46-15E](http://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2017)1280/H46-15E)

⁴⁴ DH-DD(2019)737, [http://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)737E](http://hudoc.exec.coe.int/eng?i=DH-DD(2019)737E)



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- Take measures to ensure the independence of the judiciary, reduce the extensive powers of the President of the NJO in line with the recommendations of the Venice Commission, and ensure the proper and effective functioning of the NJC.

Sincerely yours,

András Kristóf Kádár
co-chair
Hungarian Helsinki Committee